

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES H. FISCHER,

Plaintiff,

v.

STEPHEN T. FORREST, JR. SANDRA F.
FORREST, SHANE R. GEBAUER, and
BRUSHY MOUNTAIN BEE FARM, INC.

Defendants

CIVIL ACTION NO.: 14-CV-1304

JAMES H. FISCHER,

Plaintiff,

v.

STEPHEN T. FORREST, JR. SANDRA F.
FORREST, SHANE R. GEBAUER and
BRUSHY MOUNTAIN BEE FARM, INC.

Defendants.

CIVIL ACTION NO.: 14-CV-1307

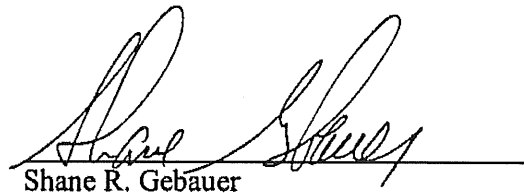
DECLARATION OF SHANE R. GEBAUER

1. I am over the age of eighteen (18) years, of sound mind, and competent to testify as to the matters contained herein.
2. I have reviewed Mr. Fischer's Affidavit dated May 8, 2017, and specifically, page 7 of the Affidavit with the heading- **Pg 29 – Fischer Has No Evidence of Actual Confusion.** Mr. Fischer's assumptions related to Mr. Gardner's post is incorrect.

3. The comment by Mr. Gardner on Brushy Mountain's website was posted on May 7, 2013. This post was approximately two and a half years (29 months) after Brushy Mountain stopped selling the Bee-Quick product.
4. A review of Mr. Gardner's order history reveals he bought an 8 oz. bottle of Natural Honey Harvester on April 8, 2012 and another 8 oz. bottle on August 25, 2012. On April 7, 2013, Mr. Gardner again bought two 8 oz. bottle of Natural Honey Harvester. We have no record of Mr. Gardner ever buying Bee-Quick as Mr. Fischer assumes in his Affidavit.
5. Brushy Mountain would place a watermark over pictures of products that an employee of Brushy Mountain photographed. We began placing a watermark on our pictures because we noticed some of our pictures were being copied and placed on third party websites. The purpose of the watermark was to prevent such unauthorized copying.
6. The sole purpose of the Natural Honey Harvester ad that appeared in Brushy Mountain's catalog and website was to advertise and sell the Natural Honey Harvester product.

I, under the penalty of perjury, hereby state that all statements and averments made herein are true and correct.

This the 15 day of May, 2016.


Shane R. Gebauer